

Before the  
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GENERAL COUNSEL  
OF COPYRIGHT

In the Matter of:	)	
DIGITAL PERFORMANCE RIGHT	)	Docket Nos. 2001-1 CARP DSTRA2 &
IN SOUND RECORDINGS AND	)	2002-1 CARP DTRA3
EPHEMERAL RECORDINGS	)	

**PREEXISTING SATELLITE SERVICES' RESPONSE  
TO REQUEST FOR WRITTEN COMMENTS ON SCHEDULING**

XM Satellite Radio Inc. and Sirius Satellite Radio Inc. (the "Preexisting Satellite Services," or the "Services") hereby respond to the Copyright Office's November 20, 2002 notice in Docket No. 2002-1 CARP DTRA3 and November 13, 2002 order in Docket No. 2001-1 CARP DSTRA2 requesting comments on Copyright Arbitration Royalty Panel ("CARP") scheduling (collectively the "Notice and Order"). The Preexisting Satellite Services respectfully submit that the schedule proposed in the November 8 Joint Motion filed by the Services and Copyright Owners and Performers is the appropriate schedule for the preexisting services CARP proceeding. The Services incorporate that motion by reference and attach a copy for the Copyright Office's convenience.

The focus of the Notice and Order is a concern with the overall scheduling of three CARP proceedings that the Office would like to begin during the 2003 calendar year: a preexisting subscription services and preexisting satellite services proceeding; a nonsubscription services proceeding, and a new subscription services proceeding. The Copyright Office raised particular concerns about the delay of the nonsubscription services proceeding, as delay of that proceeding could mean that it would be held late in the license period.

Initially, the Preexisting Satellite Services note that the schedule proposed in the Joint Motion is not likely to have a substantially greater effect on the scheduling of any of the other relevant CARP proceedings, including the nonsubscription services proceeding, than a schedule starting one or two months earlier or, for that matter, than the original December 2, 2002, schedule. Further, the Preexisting Satellite Services submit that it may be a waste of the Office's resources to start the nonsubscription services proceeding prior to the completion of the pending appeals of the decision applicable to the same nonsubscription services for the prior two CARP periods, 1998-2002. While this could result in a CARP proceeding starting late in the 2003-2004 period, the prior CARP proceeding was a consolidation of two periods, an approach that may again be utilized for the 2003-2006 license period.

If the Copyright Office determines, however, that its goal of concluding the other proceedings requires that those proceedings be held immediately, the Preexisting Satellite Services would be willing to take a back seat to those proceedings. As stated in the Joint Motion, the Copyright Owners and the Preexisting Satellite Services are negotiating, and the additional time may allow for settlement.

The Preexisting Satellite Services appreciate the Copyright Office's desire to schedule CARP proceedings to avoid multiple simultaneous proceedings in order to minimize burden on the parties, counsel, and Copyright Office staff. The Services certainly will work with the Office to minimize those burdens, but recognize that some overlap may be unavoidable.

For the foregoing reasons, the Preexisting Satellite Services respectfully request that the Copyright Office adopt the case schedule set forth in their Joint Motion.

Respectfully submitted,

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December 2, 2002



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GENERAL COUNSEL  
OF COPYRIGHT

Docket No. 2001-1 CARP  
DSTRA2

In the Matter of Adjustment of  
Rates and Terms for the Digital  
Performance Right in Sound Recordings

**JOINT MOTION FOR EXTENSION OF TIME TO FILE DIRECT CASES AND  
TO ADOPT A NEW PRE-CONTROVERSY DISCOVERY SCHEDULE**

XM Satellite Radio Inc., Sirius Satellite Radio Inc. (collectively the "Preexisting Satellite Services"), the Recording Industry Association of America ("RIAA"), the American Federation of Television and Radio Artists, and the American Federation of Musicians (collectively, "Copyright Owners and Performers"), hereby request that the Copyright Office extend the deadline for filing direct cases from December 2, 2002 to March 20, 2003 and adopt the pre-controversy discovery schedule proposed below. The parties are authorized to report that DMX has consented to the requested extension of time and proposed schedule and that Music Choice takes no position.

In support of their motion, the parties state the following:

- The Preexisting Satellite Services are currently discussing with RIAA the possibility of settlement. Although those talks may be productive, the date for filing direct cases is now less than one month away. If the schedule remains unchanged, the talks will be substantially impeded because the parties will be forced to prepare their direct cases while at the same time attempting to settle this dispute. Extending the time for filing direct cases until March 2003 will enable the parties more thoroughly to explore the possibility of settlement.
- The parties believe that the schedule proposed below is important to permit all parties to develop their respective cases in a way that will permit a fuller and more efficient presentation to the Copyright Arbitration Royalty Panel ("CARP").

This should, in turn, lead to a more fully considered and accurate result in this proceeding, based on a more complete record.

- The current schedule sets key direct case and document production deadlines during the month of December, a month when many business executives and others are out of the office and difficult to reach for substantial periods of time. It is critical that client representatives be in the office and available during both direct case preparation and discovery to prepare testimony and to assist in locating and producing responsive documents. Moving the discovery proceeding well into 2003 – when these key personnel will be more readily available – will substantially increase efficiency in preparing testimony and locating and producing underlying documents.
- The Copyright Office has recently adjusted the pre-controversy discovery schedule for the cable distribution proceeding, Docket No. 2001-8 CARP CD 98-99. Most of the discovery deadlines in that proceeding, including the due date for direct cases, now coincide or overlap with the deadlines set in this proceeding. Extending the pre-controversy discovery schedule in this proceeding would avoid possible confusion and undue burden to the Copyright Office that inevitably would result from conducting discovery in two proceedings more or less simultaneously.

In light of the above considerations, the parties propose the following schedule:

Filing of Written Direct Cases:	March 20, 2003
Requests for Underlying Documents	April 1, 2003
Responses to Requests for Underlying Documents	April 8, 2003
Completion of Document Production	April 11, 2003
Follow-up Requests for Underlying Documents	April 16, 2003
Response to Follow-up Requests	April 22, 2003
Production of Documents in Response To Follow-up Requests	April 25, 2003
Motions Related to Document Production	April 30, 2003
All other Motions, Petitions and Objections	May 5, 2003

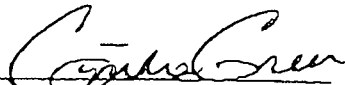
Commencement of Arbitration

June \_\_, 2003 (to be set by the Copyright Office)

The parties respectfully request that the Copyright Office modify the pre-controversy discovery schedule in this proceeding to reflect the dates proposed above.

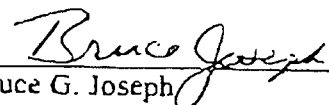
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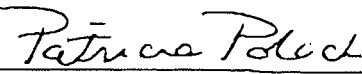
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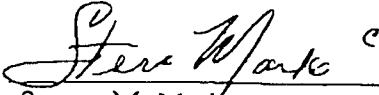
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November 8, 2002



### CERTIFICATE OF SERVICE

I hereby certify that the foregoing Preexisting Satellite Services' Response to Request for Written Comments on Scheduling was served on December 2, 2002 via hand delivery on the following:

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